

REMARKS

Claims 1-32 are pending in the application. Claims 17-32 have been canceled without prejudice.

In the Action, the Examiner rejects claims 1-6, 9-11, and 14-16 under 35 USC 103(a) as being unpatentable over Nakayama (U.S. Pat. No. 6,492,669) in view of the Applicant's admitted prior art (AAPA). The Examiner also rejects Claims 7, 8, 12 and 13 under 35 USC 103(a) as being unpatentable over Nakayama, AAPA and further in view of one of ordinary skill in the art. Applicants respectfully disagree that Nakayama is prior art to this application.

Nakayama has a filing date of June 28, 2001. Applicants aver that the present invention was reduced to practice in June/July 1999, i.e. before the June 28, 2001 filing date of Nakayama. In support of this assertion Applicants submit:

1. A declaration of prior invention under 37 CFR 1.131
2. Invention disclosure signed by Applicants on December 20, 1999. In section 4 of sheet 2 ("Reduction to Practice"), a statement is present that the present invention was reduced to practice between June and July 1999. The above time interval is prior to the June 28, 2001 filing date of Nakayama.
3. Extracts from Applicants' Notebooks

On the basis of the declaration, invention disclosure and extracts, Applicants submit that Nakayama can not be considered prior art to the present invention because the present invention was reduced to practice before the filing date of Nakayama. As a consequence, Applicants submit that the Examiner cannot make a prima facie § 103(a) rejection against claims 1-16 based on Nakayama. Reconsideration is respectfully requested.

It should be noted that claims 1-16 all relate to a process. A process is reduced to practice when it is successfully performed. See *Corona v. Dovan*, 273 U.S. 692, 1928 C.D. 252 (1928). See also MPEP 2138.05 (Requirements to Establish Actual Reduction to Practice). Applicants submit that the enclosed Affidavit and supporting evidence clearly show that the process of claims 1-16 was successfully reduced to practice prior to the June 28, 2001 filing date of Nakayama.

The enclosed declaration is signed by less than all named inventors of the present application. A further declaration is enclosed with the present response, showing that one of the inventors is unavailable. See MPEP 715.04.

* * *

Applicants submit that all claims of the application are in condition for allowance. Prompt issuance of a Notice of Allowance is earnestly solicited.

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The Commissioner is authorized to charge any additional fees which may be required or credit overpayment to deposit account no. 12-0415. In particular, if this response is not timely filed, then the Commissioner is authorized to treat this response as including a petition to extend the time period pursuant to 37 CFR 1.136 (a) requesting an extension of time of the number of months necessary to make this response timely filed and the petition fee due in connection therewith may be charged to deposit account no. 12-0415.

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450 on

November 22, 2004
(Date of Deposit)

Susan Papp
(Name of Person Depositing)

Susan Papp
Signature
11/22/04
Date

Respectfully submitted,

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Enclosures:

- Petition for 2-month extension
- 2-month extension fee in the amount of \$ 430
- Declaration of prior invention under 37 CFR 1.131
- Invention disclosure
- Pages from inventors' notebooks
- Declaration of unavailability of inventor
- Postcard